

1992, however, many new carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *Second Order on Reconsideration*.

46. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2,321 such telephone companies in operation for at least one year at the end of 1992.⁶⁵ According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing fewer than 1,500 persons.⁶⁶ All but 26 of the 2,321 non-radiotelephone companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Thus, even if all 26 of those companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone companies that might qualify as small entities. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that fewer than 2,295 of these small entity telephone communications companies other than radiotelephone companies are small entities that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*. Since 1992, however, many new carriers have entered the telephone services marketplace. At least some of these new entrants may be small entities that are affected by this *Second Order on Reconsideration*.

47. *Local Exchange Carriers.* Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of LECs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 1,410 companies reported that they were engaged in the provision of local exchange services.⁶⁷ In addition, 351 companies reported that they were engaged in the resale of telephone services and three companies reported that they were "other local carriers."⁶⁸ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,410 small incumbent LECs, and there are fewer than 351

⁶⁵ 1992 Census, *supra* note 14, at Firm Size 1-123.

⁶⁶ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

⁶⁷ *Carrier Locator Report*, *supra* note 18, at Figure 1.

⁶⁸ *Id.*

resellers as that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

48. *Interexchange Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of IXC's nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 130 companies reported that they were engaged in the provision of interexchange services.⁶⁹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of IXC's that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 130 small entity IXC's that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

49. *Competitive Access Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services (CAPs). The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 129 companies reported that they were engaged in the provision of competitive access services.⁷⁰ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 77 small entity CAPs that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

50. *Operator Services Providers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of operator services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of operator services providers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 25 companies reported that they were engaged in the

⁶⁹ *Id.*

⁷⁰ *Id.*

provision of operator services.⁷¹ Although it seems certain that some of these companies are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of operator services providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 25 small entity operator services providers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

51. *Pay Telephone Operators.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to pay telephone operators. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of pay telephone operators nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 271 companies reported that they were engaged in the provision of pay telephone services.⁷² Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of pay telephone operators that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 271 small entity pay telephone operators that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

52. *Wireless (Radiotelephone) Carriers.* SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.⁷³ According to SBA's definition, a small business radiotelephone company is one employing fewer than 1,500 persons.⁷⁴ The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

⁷¹ *Id.*

⁷² *Id.*

⁷³ 1992 *Census*, *supra* note 14, at Firm Size 1-123.

⁷⁴ 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 4812.

53. *Cellular Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 792 companies reported that they were engaged in the provision of cellular services.⁷⁵ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 792 small entity cellular service carriers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

54. *Mobile Service Carriers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for radiotelephone (wireless) companies. The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 138 companies reported that they were engaged in the provision of mobile services.⁷⁶ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 138 small entity mobile service carriers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

55. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than \$40 million in the three previous calendar years.⁷⁷ For Block F, an additional classification for "very small businesses" was added and is defined as an entity that, together with their affiliates, has average gross

⁷⁵ *Carrier Locator Report*, *supra* note 18, at Figure 1.

⁷⁶ *Id.*

⁷⁷ See *Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, Report and Order, 11 FCC Rcd 7824, ¶¶ 57-60 (1996), 61 FR 33859 (July 1, 1996); see also 47 C.F.R. § 24.720(b).

revenues of not more than \$15 million for the preceding three calendar years.⁷⁸ These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F.⁷⁹ However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of small broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules.

56. *SMR Licensees.* Pursuant to 47 C.F.R. § 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than \$15 million in the three previous calendar years. This definition of a "small entity" in the context of 800 MHz and 900 MHz SMR has been approved by the SBA.⁸⁰ The rules adopted in this *Second Order on Reconsideration* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than \$15 million. We assume, for purposes of this Supplemental FRFA, that all of the extended implementation authorizations may be held by small entities, which may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

57. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of geographic area SMR licensees affected by the rules adopted in this *Second Order on Reconsideration* include these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses

⁷⁸ *Id.* at ¶ 60.

⁷⁹ FCC News, *Broadband PCS, D, E and F Block Auction Closes*, No. 71744 (released January 14, 1997).

⁸⁰ See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and the 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89-583, *Second Order on Reconsideration and Seventh Report and Order*, 11 FCC Rcd 2639, 2693-702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463 (1995).

will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we assume, for purposes of this Supplemental FRFA, that all of the licenses may be awarded to small entities who, thus, may be affected by the decisions in this *Second Order on Reconsideration*.

58. *Resellers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies. The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the *TRS Worksheet*. According to our most recent data, 260 companies reported that they were engaged in the resale of telephone services.⁸¹ Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 260 small entity resellers that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

59. *Independent Operator Services Providers, Independent Directory Assistance Providers, Independent Directory Listing Providers, and Independent Directory Database Mangers.* Neither the Commission nor SBA has developed a definition of small entities specifically applicable to these entities. The closest applicable definition under SBA rules is for business services companies. According to SBA's definition, a small business services company is one employing with annual receipts of less than five million dollars.⁸² The Census Bureau reports that, there were 46,289 business services companies with annual receipts of 5 million dollars or less in operation at the end of 1992.⁸³ Consequently, we estimate that there are fewer than 46,289 business services companies that may be affected by the decisions and rules adopted in this *Second Order on Reconsideration*.

⁸¹ *Carrier Locator Report*, *supra* note 18, at Figure 1.

⁸² 13 C.F.R. § 121.201, Standard Industrial Classification (SIC) Code 7389.

⁸³ *1992 Census*, *supra* note 14, at Table 2D.

4. Summary Analysis of the Projected Reporting, Recordkeeping and Other Compliance Requirements and Steps Taken to Minimize the Significant Economic Impact of this *Second Order on Reconsideration* on Small Entities, Including the Significant Alternatives Considered and Rejected

60. In this section of the Supplemental FRFA, we analyze the projected reporting, recordkeeping, and other compliance requirements that may apply to small entities as a result of this *Second Order on Reconsideration*. As part of this discussion, we mention some of the types of skills that will be needed to meet the new requirements. We also describe the steps taken to minimize the economic impact of our decisions on small entities, including the significant alternatives considered and rejected.

61. *Summary of Projected Reporting, Recordkeeping and Other Compliance Requirements.* In the *Local Competition Second Report and Order*, the Commission required all LECs to allow competing providers of telephone exchange service and telephone toll service access to telephone numbers, operator services, directory assistance, and directory listings at least equal in quality to the access the LEC itself receives, without unreasonable dialing delays. In addition, LECs were to make available to competing providers operator services, directory assistance, and all adjunct features necessary for the use of these services. In the *Second Order on Reconsideration*, we affirm that a providing LEC must brand the operator or directory assistance services of a competing provider (i.e. audibly identify that provider of the operator or directory assistance service) or remove the LEC's brand name from the service provided.⁸⁴ We also state that the burden of proof falls on the providing LEC to provide evidence that it lacks the technical capability to comply with the competing provider's request and is not unlawfully restricting access to those services.⁸⁵

62. *Steps Taken to Minimize Significant Economic Impact on Small Entities.* In the *Second Order on Reconsideration*, after consideration of possible alternatives, we affirm that a providing LEC must brand the operator or directory assistance services of a competing provider or remove the LEC's brand name from the service to the extent it is technically feasible.⁸⁶ This rule aids operator or directory service providers, that may include small business entities, in their efforts to market their services and attract customers. If customers are not able to identify the entity from which they are receiving service, they would probably assume that the providing LEC is the entity from which they are receiving directory or operator assistance. We also clarify that a providing LEC cannot provide access to directory assistance listings to a requesting LEC in a manner inferior to the manner in which it

⁸⁴ See *Second Order on Reconsideration*, *supra* at part III.D.

⁸⁵ See *id.* at part III.B.

⁸⁶ See *id.* at part III.D.

supplies the information to itself.⁸⁷ In addition, we conclude that the providing LEC must provide updates to the requesting LEC at the same time and in the same manner that it supplies updates to itself. If incumbent LECs were not obligated to supply directory assistance listings in a readily accessible format, new entrants, some of which may be small business entities, would have limited access to the incumbent LECs' listings and would thus provide their customers with slower directory assistance service, and possibly, inferior data.⁸⁸

5. Report to Congress

63. The Commission shall send a copy of this Supplemental FRFA, along with this *Second Order on Reconsideration*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801(a)(1)(A). A copy of this Supplemental FRFA will also be published in the Federal Register.

C. Notice of Proposed Rulemaking - Initial Regulatory Flexibility Act Analysis

64. As required by the Regulatory Flexibility Act (RFA), as amended,⁸⁹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking (Notice)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁹⁰ In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.⁹¹

1. Need for and Objectives of the Proposed Rules

65. The Commission is issuing the *Notice of Proposed Rulemaking* to seek comment on issues arising out of developments in, and the convergence of, directory publishing and directory assistance.⁹² The resolution of these issues may affect small entities that publish directories, provide directory assistance, or provide listing information to directory publishers or directory assistance providers.

⁸⁷ See *id.* at part III.A.

⁸⁸ See *id.* at part III.E.

⁸⁹ 5 U.S.C. § 603.

⁹⁰ See 5 U.S.C. § 603(a).

⁹¹ See *id.*

⁹² See *Notice of Proposed Rulemaking*, *supra* at part IV.

66. We invite comment on issues relating to the development of Internet directories, including whether section 222(e) entitles directory publishers to obtain subscriber list information for use in those directories. The issues include whether carriers that provide subscriber list information pursuant to section 222(e) may restrict how third parties may access and use Internet directories containing that information. We also invite comment on whether the provision of access to an Internet directory through a web site constitutes the provision of directory assistance within the meaning of section 251(b)(3). We invite the commenters to provide specific proposals on whether and, if so, how we should change our rules implementing sections 222(e) and 251(b)(3) in the event we conclude that Internet directory providers are engaged in both directory publishing under section 222(e) and directory assistance under section 251(b)(3).⁹³

67. The Commission is also issuing the *Notice* to seek comment on whether and how the Commission may require the provision of nondiscriminatory access to such directory assistance providers that do not themselves provide either telephone exchange service or telephone toll service. We further seek comment on whether a non-carrier directory assistance provider is entitled to nondiscriminatory access to directory assistance under section 251(b)(3) when that provider is the agent of a LEC or other carrier that qualifies for the benefits of section 251(b)(3). We further invite comment on whether the phrase "for purposes of publishing directories in any format" in section 222(e) encompasses the oral publication of listing information by a directory assistance provider. Assuming that we conclude that a directory assistance provider may not obtain subscriber list information pursuant to section 222(e), we invite comment on whether an entity that obtains listing information pursuant to section 251(b)(3) is free to use that information to publish directories in addition to using that information to provide directory assistance. Lastly, we seek comment on whether the Commission should require nondiscriminatory access to directory assistance to non-carrier directory assistance providers pursuant to sections 201 and 202 of the Act.⁹⁴

68. We invite comment on issues relating to the development of national directory assistance, a service that permits a directory assistance customer to obtain the telephone numbers of subscribers located anywhere in the United States. These issues include whether all LECs providing national directory assistance must provide nondiscriminatory access to nonlocal directory assistance data pursuant to section 251(b)(3). We also seek comment on whether section 251(b)(3) requires LECs to provide nondiscriminatory access to any nonlocal directory assistance data that they use to provide directory assistance to customers within their service areas. We ask whether section 251(b)(3) authorizes us to require a LEC to provide nondiscriminatory access to directory assistance data that it has obtained from third parties and, if so, whether we should exercise that authority. We invite comment on whether section 251(b)(3) requires a LEC, that combines listings for areas traditionally covered by its

⁹³ See *id.* at part IV.A.

⁹⁴ See *id.* at part IV.B.

directory assistance operation and other listings obtained from a third-party into a single database, to provide the entire database, including the non-traditional listings, to requesting carriers. We ask commenters to address whether, if a LEC is not required to provide access to the non-traditional listings under section 251(b)(3), the LEC's directory assistance competitors would encounter increased burdens or extra costs from being able to obtain only traditional listings from the LEC.⁹⁵

2. Legal Basis

69. The *Notice of Proposed Rulemaking* is adopted pursuant to sections 1, 4(i), 201, 202, 222(e), 222(f)(3), 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 201, 202, 222(e), 222(f)(3), 251, & 303(r).

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

70. Consistent with our conclusions in the *Third Report and Order*, our subscriber list information rules affect directory publishers as well as carriers that gather subscriber list information in their capacity as providers of telephone exchange services. Therefore, any new or changed rules adopted as a result of the *Notice* might affect small entities, as described in the Final Regulatory Flexibility Analysis (FRFA). For a list of the small entities to which the proposed rules would apply, see part A.3 of this Appendix (Description and Estimate of the Number of Small Entities to Which the Rules Will Apply). We hereby incorporate that description and estimate into this IRFA. These entities include wireline carriers, wireless carriers, and directory publishers. In the FRFA, we discuss the number of small businesses falling within applicable standard industrial classification categories, and attempt to refine further those estimates using available information regarding carriers and directory publishers.

71. Consistent with our conclusions in the *Third Order on Reconsideration*, our non-discriminatory access rules affect LECs, interexchange carriers, providers of cellular, broadband PCS, and geographic area 800 MHz and 900 MHz specialized mobile radio services, including licensees who have obtained extended implementation authorizations in the 800 MHz or 900 MHz SMR services, either by waiver or under section 90.629 of the Commission's rules. Our rules apply to SMR licensees only if they offer real-time, two-way voice service that is interconnected with the public switched network. Additional business entities affected by the rules include providers of telephone toll service, providers of telephone exchange service, independent operator service providers, independent directory assistance providers, independent directory listing providers, independent directory database managers, and resellers of these services.

⁹⁵ See *id.* at part IV.C.

72. Therefore, any new or changed rules adopted as a result of the *Notice* might affect small entities, as described in the Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA), set forth in part B of this Appendix. For a list of the small entities to which the proposed rules would apply, see part B.3 of this Appendix (Description and Estimate of the Number of Small Entities to Which the Rules Will Apply). We hereby incorporate that description and estimate into this IRFA. These entities include wireline carriers, wireless carriers, and directory assistance providers. In the Supplemental FRFA, we discuss the number of small businesses falling within applicable standard industrial classification categories, and attempt to refine further those estimates using available information regarding carriers and directory assistance providers.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

73. See part V.C.3 of the attached item for an Initial Paperwork Reduction Act analysis. This *Notice* seeks comment on several possible information collections. The *Notice* seeks comment on issues relating to the development of Internet directories, including whether section 222(e) entitles directory publishers to obtain subscriber list information for use in those directories. We also invite comment on whether the provision of access to an Internet directory through a web site constitutes the provision of directory assistance within the meaning of section 251(b)(3). We invite the commenters to provide specific proposals on whether and, if so, how we should change our rules implementing sections 222(e) and 251(b)(3) in the event we conclude that Internet directory providers are engaged in both directory publishing under section 222(e) and directory assistance under section 251(b)(3).⁹⁶ The resolution of these issues will potentially affect the rates, terms, and conditions under which carriers provide directory publishers and directory assistance providers with telephone subscriber listing information. As indicated above, these carriers, directory publishers, and directory assistance providers may all be small entities.

74. The *Notice* also seeks comment on whether the phrase "for purposes of publishing directories in any format" as used in section 222(e) encompasses the oral publication of listing information by a directory assistance provider. The statutory language does not state whether a person is obtaining subscriber list information "for purposes of publishing directories in any format" when it obtains that information to provide directory assistance. Assuming that the Commission concludes that a directory assistance provider may not obtain subscriber list information pursuant to section 222(e), the *Notice* invites comment on whether an entity that obtains listing information pursuant to section 251(b)(3) is free to use that information to publish directories in addition to using that information to provide directory assistance. The *Notice* also invites comment on whether and how the Commission may require the provision of nondiscriminatory access to such directory assistance providers that do not themselves provide either telephone exchange service or

⁹⁶ See *id.* at part IV.A.

telephone toll service. The *Notice* further seeks comment on whether a non-carrier directory assistance provider is entitled to nondiscriminatory access to directory assistance under section 251(b)(3) when that provider is the agent of a LEC or other carrier that qualifies for the benefits of section 251(b)(3). Lastly, the *Notice* seeks comment on whether the Commission should require nondiscriminatory access to directory assistance to non-carrier directory assistance providers pursuant to sections 201 and 202 of the Act.⁹⁷ The resolution of these issues will potentially affect the rates, terms, and conditions under which directory assistance providers obtain listing information from carriers. These carriers, directory publishers, and directory assistance providers may all be small entities.

75. We also invite comment on issues relating to the development of national directory assistance. These issues include whether all LECs providing national directory assistance must provide nondiscriminatory access to nonlocal directory assistance data pursuant to section 251(b)(3). We also seek comment on whether section 251(b)(3) requires LECs to provide nondiscriminatory access to any nonlocal directory assistance data that they use to provide directory assistance to customers within their service areas. We ask whether section 251(b)(3) authorizes us to require a LEC to provide nondiscriminatory access to directory assistance data that it has obtained from third parties and, if so, whether we should exercise that authority. We invite comment on whether section 251(b)(3) requires a LEC, that combines listings for areas traditionally covered by its directory assistance operation and other listings obtained from a third-party into a single database, to provide the entire database, including the non-traditional listings, to requesting carriers. We ask commenters to address whether, if a LEC is not required to provide access to the non-traditional listings under section 251(b)(3), the LEC's directory assistance competitors would encounter increased burdens or extra costs from being able to obtain only traditional listings from the LEC.⁹⁸ The resolution of these issues also will potentially affect small entities that either provide national directory assistance or that seek to provide that or similar services.

5. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

76. This *Notice* is designed to develop a complete record on Internet directory publishers' rights to obtain listing information from carriers. The *Notice* also is designed to seek comment on ways to address fully third party rights to obtain telephone exchange service subscribers' names, addresses, and telephone numbers from LECs. In addition, the *Notice* seeks to develop a complete record on issues relating to national directory assistance, a service that permits a directory assistance customer to obtain the telephone numbers of subscribers located anywhere in the United States.

⁹⁷ See *id.* at part IV.B.

⁹⁸ See *id.* at part IV.C.

77. As discussed in the *Third Report and Order*, we recognize that the ability of independent directory publishers to improve customer service and to develop new products is dependent on telecommunications carriers' understanding and complying with their obligations under section 222(e). Many independent directory publishers are small, entrepreneurial businesses. Our actions in the *Third Report and Order* will benefit these directory publishers by facilitating their directory publishing operations. Those actions also will eliminate barriers to entering the directory publishing market, and thus benefit small entities as they take that step. In general in the *Third Report and Order*, we have attempted to implement section 222(e) in a manner that keeps burdens on carriers to a minimum while ensuring that directory publishers, including new entrants, are able to compete based on the quality of their directories.

78. As discussed in the *Second Order on Reconsideration*, the Commission promulgated rules and policies to require incumbent LECs to provide competitors with access to the incumbent LECs' networks sufficient to create a competitively neutral playing field for new entrants consistent with section 251(b)(3). Among these rules, the Commission required incumbent LECs to provide nondiscriminatory access to directory assistance and directory listings to ensure that customers of all LECs would have access to accurate directory assistance information.

79. The issues raised in the *Notice* are outgrowths of the issues addressed in the *Third Report and Order* and *Second Order on Reconsideration*. We believe that this *Notice* seeks ways to further our commitment to minimizing regulatory burdens on small entities in accordance with statutory requirements.

APPENDIX D -- FINAL RULES

Parts 51 and 64 of the Code of Federal Regulations are amended as follows:

PART 51 -- INTERCONNECTION

1. The authority citation for Part 51 continues to read as follows:

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. §§ 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. §§ 153, 154, 201-05, 207-09, 218, 225-7, 251-2, 271 and 332 unless otherwise noted.

2. Revise § 51.217(c)(3) to read as follows:

(c) ***

(3) *Directory assistance services and directory listings.*

(i) *Access to directory assistance.* A LEC shall permit competing providers to have access to its directory assistance services, including directory assistance databases, so that any customer of a competing provider can obtain directory listings, except as provided in paragraph (c)(3)(iv) of this section, on a nondiscriminatory basis, notwithstanding the identity of the customer's local service provider, or the identity of the provider for the customer whose listing is requested. A LEC must supply access to directory assistance in the manner specified by the competing provider, including transfer of the LECs' directory assistance databases in readily accessible magnetic tape, electronic or other convenient format, as provided in paragraph (c)(3)(iii) of this section. Updates to the directory assistance database shall be made in the same format as the initial transfer (unless the requesting LEC requests otherwise), and shall be performed in a timely manner, taking no longer than those made to the providing LEC's own database. A LEC shall accept the listings of those customers served by competing providers for inclusion in its directory assistance/operator services databases.

(ii) *Access to directory listings.* A LEC that compiles directory listings shall share directory listings with competing providers in the manner specified by the competing provider, including readily accessible tape or electronic formats, as provided in paragraph (c)(3)(iii) of this section. Such data shall be provided in a timely fashion.

(iii) *Format.* A LEC shall provide access to its directory assistance services, including directory assistance databases, and to its directory listings in any format the competing provider specifies, if the LEC's internal systems can accommodate that format.

(a) If a LEC's internal systems do not permit it provide directory assistance or directory listings in the format the specified by the competing provider, the LEC shall:

(1) Within thirty days of receiving the request, inform the competing provider that the requested format cannot be accommodated and tell the requesting provider which formats can be accommodated; and

(2) Provide the requested directory assistance or directory listings in the format the competing provider chooses from among the available formats.

(iv) *Unlisted numbers.* A LEC shall not provide access to unlisted telephone numbers, or other information that its customer has asked the LEC not to make available, with the exception of customer name and address. The LEC shall ensure that access is permitted to the same directory information, including customer name and address, that is available to its own directory assistance customers.

(v) *Adjuncts to services.* Operator services and directory assistance services must be made available to competing providers in their entirety, including access to any adjunct features (e.g., rating tables or customer information databases) necessary to allow competing providers full use of these services.

PART 64 -- MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

Part 64 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 64 continues to read as follows:

AUTHORITY: 47 U.S.C. 1-5, 7, 201-05, 222.

2. The table of contents for Part 64 is revised to read as follows:

* * * * *

Subpart X -- Subscriber List Information

64.2301	Basis and purpose.
64.2305	Definitions.
64.2309	Provision of subscriber list information.
64.2313	Timely basis.
64.2317	Unbundled basis.
64.2321	Nondiscriminatory rates, terms, and conditions.
64.2325	Reasonable rates, terms, and conditions.
64.2329	Format.
64.2333	Burden of Proof

- 64.2337 Directory publishing purposes.
- 64.2341 Record keeping.
- 64.2345 Primary advertising classification.

3. Subpart X is added to read as follows:

Subpart X -- Subscriber List Information

§ 64.2301 Basis and purpose.

(a) *Basis.* These rules are issued pursuant to the Communications Act of 1934, as amended.

(b) *Purpose.* The purpose of these rules is to implement section 222(e) of the Communications Act of 1934, as amended, 47 U.S.C. 222. Section 222(e) requires that "a telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format."

64.2305 Definitions.

Terms used in this subpart have the following meanings:

(a) *Base file subscriber list information.* A directory publisher requests base file subscriber list information when the publisher requests, as of a given date, all of a carrier's subscriber list information that the publisher wishes to include in one or more directories.

(b) *Business subscriber.* Business subscriber refers to a subscriber to telephone exchange service for businesses.

(c) *Primary advertising classification.* A primary advertising classification is the principal business heading under which a subscriber to telephone exchange service for businesses chooses to be listed in the yellow pages, if the carrier either assigns that heading or is obligated to provide yellow pages listings as part of telephone exchange service to businesses. In other circumstances, a primary advertising classification is the classification of a subscriber to telephone exchange service as a business subscriber.

(d) *Residential subscriber.* Residential subscriber refers to a subscriber to telephone exchange service that is not a business subscriber.

(e) *Subscriber list information.* Subscriber list information is any information (A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are

assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(f) *Telecommunications carrier.* A telecommunications carrier is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)).

(g) *Telephone exchange service.* Telephone exchange service means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

(h) *Updated subscriber list information.* A directory publisher requests updated subscriber list information when the publisher requests changes to all or any part of a carrier's subscriber list information occurring between specified dates.

§ 64.2309 Provision of subscriber list information.

(a) A telecommunications carrier that provides telephone exchange service shall provide subscriber list information gathered in its capacity as a provider of such service on a timely and unbundled basis, under nondiscriminatory and reasonable rates, terms, and conditions, to any person upon request for the purpose of publishing directories in any format.

(b) The obligation under paragraph (a) to provide a particular telephone subscriber's subscriber list information extends only to the carrier that provides that subscriber with telephone exchange service.

§ 64.2313 Timely basis.

(a) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on a timely basis only if the carrier provides the requested information to the requesting directory publisher either:

(1) At the time at which, or according to the schedule under which, the directory publisher requests that the subscriber list information be provided;

(2) When the carrier does not receive at least thirty days advance notice of the time the directory publisher requests that subscriber list information be provided, on the first business day that is at least thirty days from date the carrier receives that request; or

(3) At a time determined in accordance with paragraph (b).

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information within either of the time frames specified in subparagraph (a)(1), the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested schedule cannot be accommodated and tell the directory publisher which schedules can be accommodated; and

(2) Adhere to the schedule the directory publisher chooses from among the available schedules.

§ 64.2317 Unbundled basis.

(a) A directory publisher may request that a carrier unbundle subscriber list information on any basis for the purpose of publishing one or more directories.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information on an unbundled basis only if the carrier provides:

(1) The listings the directory publisher requests and no other listings, products, or services; or

(2) Subscriber list information on a basis determined in accordance with paragraph (c).

(c) If the carrier's internal systems do not permit it unbundle subscriber list information on the basis a directory publisher requests, the carrier must:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that it cannot unbundle subscriber list information on the requested basis and tell the directory publisher the bases on which the carrier can unbundle subscriber list information; and

(2) In accordance with paragraph (d), provide subscriber list information to the directory publisher unbundled on the basis the directory publisher chooses from among the available bases.

(d) If a carrier provides a directory publisher listings in addition to those the directory publisher requests, the carrier may impose charges for, and the directory publisher may publish, only the requested listings.

(e) A carrier must not require directory publishers to purchase any product or service other than subscriber list information as a condition of obtaining subscriber list information.

§ 64.2321 Nondiscriminatory rates, terms, and conditions.

For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under nondiscriminatory rates, terms, and conditions only if the carrier provides subscriber list information gathered in its capacity as a provider of telephone exchange service to a requesting directory publisher at the same rates, terms, and conditions that the carrier provides the information to its own directory publishing operation, its directory publishing affiliate, or other directory publishers.

§ 64.2325 Reasonable rates, terms, and conditions.

(a) For purposes of § 64.2309, a telecommunications carrier will be presumed to provide subscriber list information under reasonable rates if its rates are no more than \$0.04 a listing for base file subscriber list information and no more than \$0.06 a listing for updated subscriber list information.

(b) For purposes of § 64.2309, a telecommunications carrier provides subscriber list information under reasonable terms and conditions only if the carrier does not restrict a directory publisher's choice of directory format.

§ 64.2329 Format.

(a) A carrier shall provide subscriber list information obtained in its capacity as a provider of telephone exchange service to a requesting directory publisher in the format the publisher specifies, if the carrier's internal systems can accommodate that format.

(b) If a carrier's internal systems do not permit the carrier to provide subscriber list information in the format the directory publisher specifies, the carrier shall:

(1) Within thirty days of receiving the publisher's request, inform the directory publisher that the requested format cannot be accommodated and tell the directory publisher which formats can be accommodated; and

(2) Provide the requested subscriber list information in the format the directory publisher chooses from among the available formats.

§ 64.2333 Burden of Proof.

(a) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it claims its internal

subscriber list information systems cannot accommodate the delivery time, delivery schedule, unbundling level, or format requested by a directory publisher.

(b) In any future proceeding arising under section 222(e) of the Communications Act or § 64.2309, the burden of proof will be on the carrier to the extent it seeks a rate exceeding \$0.04 per listing for base file subscriber list information or \$0.06 per listing for updated subscriber list information.

§ 64.2337 Directory publishing purposes.

(a) Except to the extent the carrier and directory publisher otherwise agree, a directory publisher shall use subscriber list information obtained pursuant to section 222(e) of the Communications Act or § 64.2309 only for the purpose of publishing directories.

(b) A directory publisher uses subscriber list information "for the purpose of publishing directories" if the publisher includes that information in a directory, or uses that information to determine what information should be included in a directory, solicit advertisers for a directory, or deliver directories.

(c) A telecommunications carrier may require any person requesting subscriber list information pursuant to section 222(e) of the Communications Act or § 64.2309 to certify that the publisher will use the information only for purposes of publishing a directory.

(d) A carrier must provide subscriber list information to a requesting directory publisher even if the carrier believes that the directory publisher will use that information for purposes other than or in addition to directory publishing.

§ 64.2341 Record keeping.

(a) A telecommunications carrier must retain, for at least one year after its expiration, each written contract that it has executed for the provision of subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf.

(b) A telecommunications carrier must maintain, for at least one year after the carrier provides subscriber list information for directory publishing purposes to itself, an affiliate, or an entity that publishes directories on the carrier's behalf, records of any of its rates, terms, and conditions for providing that subscriber list information which are not set forth in a written contract.

(c) A carrier shall make the contracts and records described in paragraphs (a) and (b) available, upon request, to the Commission and to any directory publisher that requests those contracts and records for the purpose of publishing a directory.

§ 64.2345 Primary advertising classification.

A primary advertising classification is assigned at the time of the establishment of telephone exchange service if the carrier that provides telephone exchange service assigns the classification or if a tariff or State requirement obligates the carrier to provide yellow pages listings as part of telephone exchange service to businesses.

**Separate Statement
of
Commissioner Susan Ness**

Re: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information (CC Docket Nos. 96-115, 96-98).

Today the Commission has adopted rules implementing section 222(e) of the Telecommunications Act pertaining to subscriber list information. Regrettably, it has taken the Commission over three years to complete this rulemaking proceeding.

I write separately because, unlike the majority, I would have decided the issue regarding Internet databases that contain subscriber list information. Section 222(e) entitles directory publishers to obtain subscriber list information "for the purpose of publishing directories in any format." The majority seeks further comment on whether the phrase "directories in any format" encompasses Internet databases. To me, the statutory language is clear on this point -- "in any format" necessarily includes directories published in an electronic format.¹ Indeed, at least one Bell company markets its Internet database containing subscriber list information as "The Real White Pages."² We are, after all, living in an electronic age. The Internet has increasingly become an important part of our everyday lives. By not deciding this issue -- particularly in light of the length of time that it has taken the Commission to complete this proceeding -- we postpone the day that competitive directory publishers (and, thus, Internet-savvy consumers) will reap the pro-competitive benefits envisioned by Congress.

¹ See, e.g., *Reno v. ACLU*, 521 U.S. 844, 117 S.Ct. 2329, 2335 (1997) (stating that "[a]ny person or organization with a computer connected to the Internet can 'publish' information").

² See <http://yp.bellsouth.com> (stating that "[t]he Real White Pages was designed to provide greater efficiency through quick electronic directory searches and to eliminate the hassle associated with telephone directory distribution").

**SEPARATE STATEMENT OF
COMMISSIONER HAROLD FURCHTGOTT-ROTH
DISSENTING IN PART**

*Re: In the Matters of Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Provision of Directory Listing Information under the Telecommunications Act of 1934, As Amended (CC Docket Nos. 96-115; 96-98; 99-**).*

I support aspects of this Order, but write separately to express several reservations. I strenuously object to the majority's establishment of a presumptively reasonable rate for updated subscriber listing information in the absence of credible evidence supporting that decision. I also disagree with the majority's definition of "nondiscriminatory" and am troubled by the resulting imposition of requirements that will result in the micromanagement of the provision of operator services and directory assistance. Finally, I object to the initiation of a rulemaking proceeding that I find to be unnecessary.

I. Presumptive Rate for Updates

I dissent from the majority's conclusion that \$0.06 per listing for "updated" subscriber listing information is a presumptively reasonable rate. *Supra.* at paras. 99-103. First, I cannot accept the notion that there is a single price that can be presumed reasonable when the cost of updated listings will vary according to the nature of the particular request. Regulators can attempt to regulate price, quantity, or quality. We cannot expect to regulate any two of these factors without affecting the third, and it is virtually impossible to regulate all three. In today's Order, the majority permits the requesting entity to choose the quantity and the quality of the listings, while the government sets the price. *See supra.* Part II.G. This leaves no variable of control to the supplier. There is simply no way to predict the cost of *different* types of requested subscriber listing information, in *different* quantities, and in *different* formats. This approach is analogous to requiring a grocer to charge \$1 for every item in the store, without regard to the quantity or quality of any particular product.

The majority concedes that "the costs a carrier incurs in responding to requests for subscriber list information may vary, depending on the delivery schedules and levels of unbundling requested, among other factors." *See supra.* at par. 67. The majority nevertheless presumes that \$0.06 will be a reasonable rate unless the carrier proves otherwise. Given their recognition that costs will vary depending on numerous factors, the establishment of a presumptive rate for updated listings seems rather arbitrary.

Moreover, assuming it was possible to demonstrate a particular cost for updated listings, there is no evidence on the record to support the majority's presumptive rate. The majority does not rest its conclusion on any factual basis; rather, as the Order concedes, it is "based on the *assumptions* that (1) a carrier's allocations of common costs and overheads should not vary significantly according to whether a directory publisher requests updated, rather than base file, subscriber list information; and (2) a carrier's incremental costs of providing subscriber list information should not significantly vary with the type of subscriber list information requested." *Supra.* at par. 100. (emphasis added). The majority provides no basis in fact for these assumptions, and I cannot fully agree with them. To the contrary, I would assume that, given the variety of requests permitted by today's Order, incremental costs can vary widely, particularly for smaller carriers, based on the nature of the request. Even if it were true that a large carrier with dedicated personnel to handle requests pursuant to section 222 may face small incremental costs in providing updated listings, it is not at all apparent that smaller carriers will face similar cost structures.

Finally, the statute does not require us to establish a presumptively reasonable rate for updates. By setting a \$0.04 presumptively reasonable rate for the base file, the Commission facilitates the purchase of these listings by those entities interested in obtaining them. There is simply no need to establish a "one-size-fits-all" approach to setting a rate for updates, particularly in the absence of any evidence to support this rate.

II. Petitions for Reconsideration

I am also troubled by the Order's treatment of the petitions for reconsideration of the Local Competition Order, Second Report and Order. First, I do not agree with the Commission's interpretation of "nondiscriminatory." Moreover, I am concerned that, in applying that standard to operator services and directory assistance, today's Order results in micromanagement of these services and places too high of a burden on carriers, big and small, new entrants and incumbents, that operate their own operator services and directory assistance platform. It is not clear that Congress intended, through section 251(b), to establish an elaborate set of requirements for carriers that develop, or have developed, these capabilities.

Today's order affirms the Commission's definition of "nondiscriminatory access" for purposes of section 251(b). *Supra.* at par. 128. Section 51.217 of the Commission's rules defines "nondiscriminatory access" as access "that is at least equal to the access that the providing local exchange carrier itself receives" and includes "[t]he ability of a competing provider to obtain access that is at least equal in quality to that of the providing LEC."

I would interpret "nondiscriminatory" differently. To me, this term is not meant to address discrimination as between the incumbent LEC and requesting telecommunications carriers; rather it is meant to prohibit discrimination by the incumbent LEC as among requesting carriers. That is, nondiscriminatory access does not mean that the incumbent LEC

must treat all requesting telecommunications carriers as it treats itself, but that the incumbent LEC must treat a particular requesting telecommunications carrier just as it treats all other requesting telecommunications carriers.

This interpretation is more consistent with the principle of statutory construction that "where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."¹ In the *next subsection* of section 251, Congress explicitly required incumbent LECs to provide interconnection that is not only "nondiscriminatory," but also "that is at least equal in quality to that provided by the LEC to itself or to any subsidiary, affiliate, or any other party to which the carrier provided interconnection."² If "nondiscriminatory" already included the concept of "equal in quality," this additional language would be mere surplusage, and statutes should be construed to avoid such a result. Congress could have imposed the "equal in quality" standard in section 251(b)(3), but did not do so.

Application of this nondiscriminatory standard produces troubling results in the majority's related interpretation of the requirements imposed by section 251(b)(3). I am concerned, for example, that the elaborate rebranding requirements perpetuated and expanded in today's Order go beyond what is necessary to implement this section. Inasmuch as these rebranding requirements arise out of the nondiscriminatory standard, one wonders whether the majority would be prepared to impose a requirement that carriers rebrand their trucks and staff uniforms as complete implementation of this standard would seem to require. Moreover, I am concerned that the majority overlooks the fact that its elaborate requirements apply to *all* local exchange carriers, even those that are attempting to develop a platform for operator services and directory assistance. I fear that the obligations placed on such carriers in today's Order may discourage new investment in these platforms. I would prefer to let competitive forces dictate the how carriers provide operator services and directory assistance. Indeed, it appears that competition in this market is developing successfully.

III. "Publishing Directories in Any Format"

Finally, I find it unnecessary to initiate a Notice of Proposed Rulemaking regarding the availability of subscriber list information to requesting parties that intend to publish directories either electronically or orally. The statute requires that carriers make this information available "to any person upon request for the purpose of publishing directories in any format." Webster's Third New International dictionary is instructive. It defines "publish" to mean "to declare publicly: make generally known: disclose, circulate." Thus an operator orally

¹ *Gonzon-Peretz v. United States*, 498 U.S. 395, 404 (1991).

² Section 251(c)(2).

"making known" subscriber list information to a requesting party over the telephone or an entity that "discloses" this information on an Internet site would clearly be engaging in activity that the dictionary would call "publishing."³ In an age where commentators discuss the potential for a "paperless society," I cannot believe that a reference to publishing "in any format" should be limited to the printing of subscriber list information on paper.

³ See *Gertz v. Welch*, 418 U.S.323, 332 (1974) (deciding principal issue of whether "a newspaper or broadcaster that 'publishes' defamatory falsehoods about an individual" may claim a constitutional privilege against liability); see also *Reno v. ACLU*, 521 U.S. 844, 853 (1997) ("[a]ny person or organization with a computer connected to the Internet can 'publish' information").